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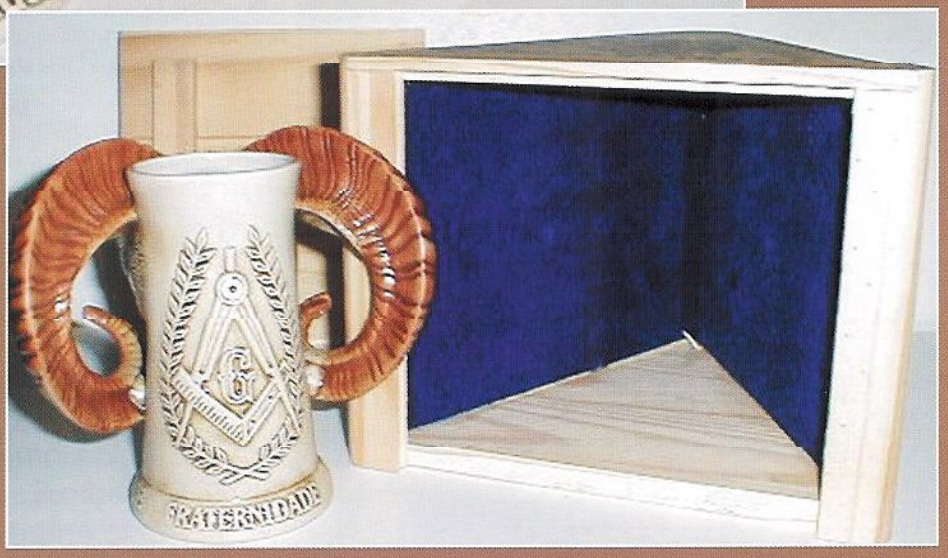

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The Power to Destroy

A Call to Restore the Masonic Model for Social Welfare

by William L. Mills, III, MPS

What I tell you once you may question,
What I tell you twice you may doubt, but
What I tell you three times is true.
- Unknown

Now Scholars how many times do I have to tell you, we never get off the subject. Mr. Mills please explain to the class how what we've been talking about relates to the subject at hand.
Elliot T. Schmidt - History Professor and Debate Coach
The McCallie School circa 1972

Introduction.

Panicked by the economic disruption known as the Great Depression, the United States Congress, at the end of the third decade of the Twentieth Century sought desperately to do something, anything to give the impression that it could "solve" the problem. Being in the words of Mark Twain "the only Criminal Class native to America," a cynic might assume Congress' true intent was to obscure the fact that the domestic situation and the international malaise were the respectively the indirect and direct results of its own interference with the marketplace.

The domestic situation resulted from the bungling of the first of the many Independent Agencies[1] Congress would create. Authorized by the Federal Reserve Act in 1913, by the late 1920's the Federal Reserve Board was anxious to expand its powers. Believing that the Stock Market was rising too fast, it first raised interest rates to lower stock prices and then contracted the monetary supply to mop up excess liquidity in response to the Stock Market Crash on Black Tuesday, October 29, 1929.

Congress enacted the Hawley-Smoot Tariff Act in 1930, which promptly spread the domestic economic disruption to the rest of the developed world and more particularly to Europe. The citizens of the sovereign states of Europe were already suffering from the Great War of 1914 to 1918 and the burdens created by the failed diplomacy at Versailles in 1918 and 1919. The disruption of international trade caused by the protective barriers of the Hawley-Smoot Tariff Act prolonged the existing malaise enough to allow the sprouting economic and governing principals of national socialism, fascism, and communism to take firm root.

In the Nineteenth Century and early Twentieth Century the mutual aid or fraternal benefit society was the primary vehicle, providing social welfare benefits in England and North America.[2] The economic disruption of the 1920's and 1930's and the rise of socialism, fascism, and communism led to government preemption of most social welfare activities. Even where the government did not entirely preempt private efforts, its tax and other policies severely curtailed the freedom and scope of private efforts.

Freemasonry survived this social upheaval. It survived because social welfare was neither its primary function nor the reason for its existence. Social welfare was merely a natural extension of Freemasonry's fundamental principles. In the Eighteenth Century Freemasonry stood alone as a fraternal voluntary association.[3] Consequently the Masonic fraternity provided the principal model for the universe of fraternal and mutual aid voluntary associations that formed in the Nineteenth and Twentieth Centuries.[4] In the United States Freemasonry's social welfare programs, as evidenced by number of Masonic Homes has dramatically decreased.[5]

Despite government preemption private mutual aid and social benefit is still possible and may be beginning a resurgence.[6] The surviving Masonic Homes that are not dependant on the Welfare State for funding provide a model that can be duplicated. Both the Masonic Fraternity and society at large would greatly benefit from the revival of Masonic social welfare and mutual aid activity. The collapse of the Welfare State in Eastern Europe and the death throes it is evidencing in the Developed World make this task urgent.

The Power to Tax

In one of the important early rulings of the Supreme Court, M'Culloch v. Maryland,[7] Chief Justice John Marshall,[8] penned one of the most quoted phrases in the history of the Court:

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied.[9]

At issue in M'Culloch was a tax imposed by the State of Maryland on Notes and Bonds issued by the Bank of the United States. The State of Maryland in turn challenged the power of Congress to incorporate a bank and by extension to form a corporation.[10]

Chief Justice Marshall observed that any protection against the power of governments to tax must be found in the structure of the government.

It is admitted, that the power of taxing the people and their property, is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power, is found in the structure of the government itself. In imposing a tax, the legislature acts upon its constituents. This is, in general, a sufficient security against erroneous and oppressive taxation.[11]

Whether we agree with Chief Justice Marshall's view that the power to tax "is essential to the very existence of government," or believe that a system of "voluntary" taxation and fees can sustain the necessary functions of government, we

must agree with his reasoning that once the power to tax is ceded to a sovereign, "[t]he only security against the abuse of this power, is found in the structure of the government itself."[12]

The structure of the government of the United States certainly seems to afford such protections. In addition to the elected legislature in which Chief Justice Marshall expressed so much confidence, the Constitution places express limits on the power of the Congress to levy and collect taxes. Article I, section 9, clause 4 of the United States Constitution provides:

No Capitation, or other direct, tax shall be laid, unless in proportion to the Census of Enumeration herein before directed to be taken.

Know as the Apportionment Clause this provision imposes a clear structural limitation on the power of Congress to Tax.[13]

The significance of M'Culloch lay in no small part in the logical extension of Chief Justice Marshall's reasoning. If Maryland can not tax notes and bonds issued by the Bank of the United States, then Congress certainly can not tax notes and bonds issued by the State of Maryland.[14]

The First Amendment to the Constitution of the United States provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.[15]

Viewed in the light of Chief Justice Marshall's reasoning, the First Amendment eliminates the power of Congress to tax religion, the press, and political assemblies.

On February 3, 1913 New Mexico became the thirty-sixth state to ratify the Sixteenth Amendment to the Constitution of the United States. The amendment reads:

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

The straight forward purpose of the amendment was to remove "income" from the scope of the Apportionment Clause.

The Sixteenth Amendment on its face eliminates the requirement that a tax on income be apportioned. On its face it does not allow Congress to impose a tax on property, only income derived from property. On its face it does not allow the Congress to tax the states or their instrumentalities or those activities protected by the First Amendment. From 1913 until the "switch in time that saved nine"[16] the opinions of the Court reflected this plain language interpretation.

During the first year of Ronald Reagan presidency Congress adopted the Tax Equity and Fiscal Responsibility Act of 1982.[17] This legislation was a collection of tax and saving incentives that often had little to do with equity and little to do with taxes. One provision that had little to do with equity imposed a tax on Social Security benefits paid to "wealthy"[18] taxpayers. For purposes of determining whether a taxpayer was "wealthy" enough to have to pay tax on a portion of his or her Social Security benefits, the statute added tax exempt income from municipal bonds to adjusted gross income. In theory at least a taxpayer with no income other than exempt income from municipal bonds would have to pay tax on his or her Social Security benefits if the municipal bond income exceeded the threshold.[19] One provision that had little to do with taxes was a provision to extend the income tax to municipal bonds issued in bearer form. The purpose of this provision was not to collect tax revenue. The purpose of this provision was to help fight the war on drugs. South Carolina sued to enjoin the enforcement of the tax on municipal bonds.

The final opinion of the Supreme Court in the case,[20] South Carolina v Baker[21] overturned the Nineteenth Century case of Pollock v. Farmers' Loan & Trust Co.[22] in which the Court ruled an income tax adopted by Congress unconstitutional.[23] Baker left intact the holding in M'Culloch, that interest paid by the Federal Government on its notes and bonds is exempt from the tax power of the states. The basis for that result, however shifted to the Supremacy Clause[24] and away from the immunity reasoning of M'Culloch.

After Baker, all that remains of the "security against the abuse of [the power to tax]" Chief Justice Marshall found in "the structure of the government itself," is the restraint of Congress.[25] To the extent that the "structure" of the United States Government as defined by the Constitution imposed other impediments to the power of Congress to tax, those impediments have been removed by the Sixteenth Amendment and subsequent rulings by the Court.[26]

Tax Policy

Much if not most of what appears in the Internal Revenue Code, originated at a time when Congress, or at least the members who bother to consider such things, believed that the Constitution did not confer on Congress an unlimited power to tax. With each new Congress that portion of the Internal Revenue Code, that derives some basis from the fundamental principals inculcated in the Constitution is eroded and is replaced by a thin sediment of the latest whims of public policy or trendy economic theory.

Freemasonry in the United States is older than both the Internal Revenue Code[27] and the Constitution. If the "structure" of our system of government protected those activities covered by the "no law" provision of the First Amendment from the power of Congress to tax, then surely those immunities would extend to the fraternity of Freemasons. This observation is at odds with the tax policy adopted by the fraternity of Freemasons.

The Tax Policy of the United States exempts "religious," "educational," "scientific," and "charitable" organizations from the tax system[28] and more importantly affords persons who contribute to them an income tax deduction.[29] Though there is near universal agreement among Masons that Freemasonry is not a religion, it is undeniably "religious." Among its purposes is the goal of making good men better, which is undeniably educational. It promotes reason and the study of the natural world and may therefore fairly be described as scientific. It freely dispenses charity not only to its members, but to society at large. Clearly then it should be exempt from federal taxation under Internal Revenue Code section 501(c)(3). Nonetheless, Freemasonry does not to claim an exemption under Internal Revenue Code section 501(c)(3) but instead claims a less desirable exemption under Internal Revenue Code section 501(c)(10).

Until January 1, 1999 North Carolina imposed an Inheritance Tax. That tax was classified based on the relation-

ship of the recipient of a devise or bequest to the decedent. The three classifications were A immediate family, B collateral kin, and C strangers to the blood. The rates at which the tax was imposed increased across the three classes, A having the lowest rate schedule and C having the highest rate schedule. While the Inheritance Tax was in effect a member of a North Carolina lodge died leaving the remainder of his estate to his lodge. The lodge called on me to assist it in settling the brother's estate.

Federal estate taxes were not at issue. The Inheritance Tax included an exemption for gifts to organizations described in terms similar to those used in Internal Revenue Code section 501(c)(3).[30] As I began to prepare the estate's inheritance tax return, it occurred to me to challenge the application of the tax to the gift. I contacted the Inheritance and Estate Tax Division of the North Carolina Department of Revenue to inquire as to whether it was aware of any precedent. After persuading my contact that the exempt status of the lodge under the Internal Revenue Code was not dispositive of the question, he inquired of as to why I believed the lodge might be exempt. After I read my contact the Preamble to the Constitution of the Grand Lodge of North Carolina, he expressed interest in the fraternity, allowed that I seemed to have a case, and suggested that I submit a claim.

The decision, as to whether to assert a claim of exemption which I believed was entirely defensible, was thus placed squarely on my shoulders. Against my belief that the lodge was entitled to claim the exemption, weighed only the fact that to the best of my knowledge no Masonic body had ever asserted such a claim under either the federal or state tax regimes.[31]

On considering why this might be the case, I found an explanation, satisfactory to myself, in the central allegory of Masonry. Masons are workmen in the temple, they are not the objects of charity, they seek no special exemption for themselves, and they pay their own way from their wages. My consideration also extended to the impact the such a claim might have on the three 501(c)(3) charities the Grand Lodge of North Carolina sponsors. In this regard I concluded, and obtained concurrence from the Grand Master, that the Grand Lodge did not want to support any position that might tend to promote legacy gifts to lodges rather than our charities. When I explained the situation to the Master of the Lodge, he willingly authorized me to file a return without claiming the exemption and pay the schedule C tax.[32]

Although there were several earlier income taxes, both before and after the ratification of the Sixteenth Amendment, the Internal Revenue Code of 1954 first introduced section 501(c)(10).[33] This section seems to have been specifically designed for the Masonic Fraternity. R W Robert P. Dudley, who served as Grand Secretary of the Grand Lodge of North Carolina from 1975 until 1996 and as Assistant to the Grand Secretary from 1962 to 1975 told me on several occasions that section 501(c)(10) was added to the Code of 1954 for and at the request of the Masonic Fraternity. Brother Dudley was unable to direct me to any support for his statement and I have not undertaken the research to determine whether the support can be found in the Legislative history.

The fraternity of Freemasons acting of one accord has adopted a tax policy based not on financial self interest but on Masonic principles. Freemasonry has chosen not to rely on either immunity under the First Amendment or on the broad categories of the general charitable exemption, both of which based on both antiquity and principles, the Fraternity satisfies. Instead, Freemasonry, not being dependant on charitable contributions for its support, leads by example relying on a narrow exemption tailored to its needs.

This tax policy preserves the broader exemption for purer charities that are dependant on contributions. The policy is not entirely tax driven. Historically Freemasons organized their institutional charities as entities separate from the fraternity.[34]

In addition to the policy of Freemasonry toward the Civil Magistrate's tax power, Freemasonry has a tax policy with respect to its members. Taxes are assessed per capita and there are few exceptions, exemptions or reductions.

Masonic Principals

The words "sovereign," "government," and "voluntary association" have plain meanings that are ordinarily sufficient. Clear understanding of Masonic principals as they pertain to the moral aspects of charity and social welfare requires some exposition their meaning.

"Sovereign" and "government" refer to those persons or institutions that claim the right, without regard to source from which the claimed right is supposed to derive, to authorize agents of violence to deprive individuals and entities within the scope of their claimed jurisdiction or who challenge their claim of jurisdiction, of life, liberty, or property by violent means.[35] In shorter form, a sovereign or government is any entity claiming the right to make war, execute, jail, or tax. As these are not powers that people of good conscious claim over other individuals except in the necessary defense of their persons, property, or family, these powers are inherently immoral and their exercise is inherently corrupting.

A "voluntary association" is a group of individuals, under no constraint or undue influence, who agree to abide by certain rules for some common purpose and claim no authority for their association other than the autonomous consent of each member. The association claims no right to enforce its rules other than by exclusion from the association and forfeiture of property transferred to the association to obtain or retain membership.[36] The association claims no right to compel members to remain in the association. Members surrender none of their rights to defend their persons, property, or families and are not compelled to defend the persons, property, or families of other members of the association. The fraternity of Freemasons is probably the oldest "voluntary association" in continuous existence.

The corrupting nature of government power is emphasized in a reply I sent to a philosophy protégée[37] concerning his observation that my personal economic interests would not be served by the repeal of the Federal Estate Tax.

The purpose of any tax law should be to raise revenue to support the operations of the government. The power to tax, like the power to jail and the power to execute, is both violent and dangerous. These three powers of government correspond to three common crimes robbery, kidnaping, and murder. The exercise of these powers is not rendered benign with respect to the individual unjustly deprived of property, freedom of movement, or life by the imposition of a legislature or an electorate. These are the powers of government that must be most strictly circumscribed if tyranny is to be avoided. The use of

these three powers for other than their intended purposes distorts and perverts society and government. The distortion and perversion leads to tyranny. Support of the use of the power to tax for private gain distorts and perverts the individual personality. The difference between the distortion and perversion of an individual personality caused by extortion or armed robbery and abuse of the power to tax is one of subtlety not of degree. In an elective government the acceptance by the masses of the Robin Hood model with respect to taxation distorts and perverts the society and the constitution. The personality disorder of the society masks and hides the personality disorder of the individual. The estate tax is a voluntary tax; 100% avoidance can be achieved with adequate advance planning. As a result the estate tax is inefficient. Arguably more dollars are spent in avoidance than are collected in tax. If the purpose of the tax is (and it is or was) to break up large estates and redistribute wealth, (quite apart from the fact that such a purpose is a perversion of the power to tax) it is a failure because the tax is easily avoided. If the purpose of the tax is to raise revenue to support the government it is a failure because it is inefficient. A tyranny of 535 is no less a tyranny than a tyranny of 1. My father, my mother's first husband, and unknown others of my ancestors and others with whom I keep faith died fighting for the cause of freedom. I choose freedom.

While I do not suggest that these ideals are the principals of Freemasonry, I do assert that they are both informed and formed by adherence to the principles of Freemasonry.

In the last century the Government in the United States[38] involved itself deeply in providing affirmative relief the fields of "child services" and "care for the aged." Previously these fields had been considered the province of charity. Because of the powers they claim, governments tend to preempt whatever fields they occupy. Governments have a duty to protect their weakest members. That duty is limited to employing violent powers to protect and defend. Affirmative relief is the proper province of Charity. Charity is such only if it is freely given. It loses that character when it is collected either by force, as when a government collects taxes, or by compulsion, as when a voluntary association collects dues.

Charity is one of the Jewels of a Master Mason. In North Carolina as Entered Apprentices we were instructed that Charity is one of the "three principal rounds" of Jacob's ladder. We were then admonished:

to have faith in God, hope in immortality, and charity to all mankind; of these the greatest is charity; faith may be lost in sight, hope ends in fruition, but charity extends beyond the grave through the boundless realms of eternity.[39]

Charity to the Master Mason is something quite different, separate, and apart from the charitable deduction granted by the Internal Revenue Code. The payment of tax to the Government is not a moral obligation. It is a civic duty and a necessity to maintain a free society, but being as it is compelled by violence or the threat of violence, it is not moral. Likewise the avoidance of a tax, by legal means, is not a moral act. It is not charity. Charity is not motivated by the quid quo pro of tax avoidance. In Masonic terms, Charity is only that portion of a gift to Charitable purposes for which there is no value received in exchange.

Masonic Charities

Historically the fraternity of Freemasons in North America supports two charities, orphanages and homes for the aged. The genesis for these choices is found in the obligation of a Master Mason to contribute to the relief of distressed brother Master Masons, their widows and orphans. Some Grand Lodges have taken the words of the obligation so literally as to confine admission to both their homes for the aged and orphanages to persons with Masonic ties. Frequently, in those jurisdictions that permit the co-fraternity of the Eastern Star to operate, the fraternity of Freemasons has been joined in the operation of its homes for the aged by the Eastern Star. Changes in society have called these limitations into question.

Through a carrot and stick approach, revenue being the carrot and regulations being the stick the Government has fairly effectively appropriated most of the resources voluntary associations devote to these areas.[40] By declining the carrot the stick can be avoided or at least reduced in its effect. If a voluntary association declines the revenue carrot it thereby retains innocence. To employ the regulatory stick will then require the Government to utilize its powers of violence against an innocent. Such an act goes against the nature of most humans.

Mutual Aid and Charity

The description of charity under the heading Masonic Principals describes pure charity. This pure charity is relief or assistance given without consideration. Mutual Aid is a lesser form of charity. Those jurisdictions that confine admission to both their homes for the aged and children's homes to persons with Masonic ties do not operate pure charities. The relief that every Master Mason is obligated to give is not charity, it is Mutual Aid given and received for the quid pro quo of the mutual obligation.

Even a children's home operated on Mutual Aid basis will tend to be more charitable than a home for the aged. Children receiving relief seldom bring resources or revenue to the institution providing their support. Aged adults needing institutional care are rarely so impoverished that they do not bring some resources or revenue to the institution providing them care. These observations are true in the absence of the Welfare State and are enhanced in ways that have profound moral consequences for society by the emergence of the Welfare State.

Not all programs of the Welfare State are based on the collection of general revenue by the sovereign. The fact that the United States Congress draws on the Treasury without regard to the source of the funds in the Treasury, obscures the observation that neither Social Security nor Medicare revenues need to be deposited to the Treasury. Social Security and Medicare programs are necessary components of the Welfare State, however the Welfare State may choose to mandate minimum levels of participation by wage earners and self employed taxpayers in totally private pension and health care systems.[41] Neither the unwillingness of the sovereign to hold itself to the same standards it mandates for others nor its failure to offer reasonable returns on "investments" in the programs it runs,[42] should prevent us for recognizing that in the United States, Social Security and Medicare are entitlements contractual in nature.

As a consequence of mandated Social Security and Medicare all but the poorest of the poor bring substantial revenue sources if not resources to the institution providing them

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care. The Welfare State has changed the character of society and its components. In the late nineteenth and early twentieth centuries the poorest of the poor included large numbers of ambitious working poor as well as those poor both materially and in spirit. Though these individuals could generally not afford to join the more elite fraternal or mutual aid societies they participated in the system in large numbers.[43] The Welfare State allows the ambitious working poor to postpone participation in fraternal or mutual aid societies until they have greater resources. The Welfare State creates the illusion in the poor of spirit that society owes them support, therefore they need not provide for themselves.[44] The mutual dependance thus established ensures the survival of the Welfare State.

The poor in spirit will always be with us. Fraternity, voluntary associations, and mutual aid were, are and will continue to be the best hope for men and women of good faith to escape tyranny.

Footnotes

[1] Nominally Independent Agencies are a part of the Executive Branch. The Chief Executive, however is not given direct authority over Independent Agencies. In addition to executive powers, Independent Agencies exercise both judicial and legislative powers with limited supervision from the Judicial and Legislative Branches.

[2] Beito, David T., From Mutual Aid to the Welfare State: Fraternal Societies and Social Services, 1890-1967. Chapel Hill: University of North Carolina Press, 2000.

[3] Bullock, Steven C., Revolutionary Brotherhood: Freemasonry and the Transformation of the American Social Order, 1730 - 1840.

[4] Beito, Ibid.

[5] Numbers are available from Masonic Homes Executives Association of North America (MHEANA).

[6] During the 1980s and 1990s there were modest signs of resurgence, although these were not entirely unambiguous. In 1987 there were 9.1 million fraternal insurance certificates in force; by 1996 this had increased to 10.7 million, while the number of lodges rose from 42,669 to 43,282. Meanwhile, the official annual disbursements on "charity," though a far cry from the extensive social welfare of earlier periods, more than tripled from $10 million to $30 million.

Beito, Ibid. page 234.

[7] 17 U.S. 316 (1819),

[8] John Marshall, the greatest Chief Justice of the United States, was in that position from 1801 to 1835. He was also Grand Master of Virginia, from 1793-1795. (However, there is evidence that John Marshall was not proud or enthusiastic about being a Freemason, at least later in his life.)

http://www.bessel.org/sctfmy.htm

[9] . 17 U. S. 316, 430

[10] The issue of the power of Congress to form a corporation, though considered with great care does not seem to have been as serious as the question of the power of the state to tax a creature of the United States.

The power now contested was exercised by the first congress elected under the present constitution. The bill for incorporating the Bank of the United States did not steal upon an unsuspecting legislature, and pass unobserved. Its principle was completely understood, and was opposed with equal zeal and ability. 17 U.S. 316, 402 - 03.

[11] 17 U. S. 316, 428

[12] The explanation of M'Culloch presented in this paper is not extraordinary. To the contrary it conforms to the explanations found in textbooks and received texts on the subject.

[13] A "direct tax" is a tax on property. In the Nineteenth Century and early Twentieth Century wills would sometimes devise the "rents" from a certain farm or other real estate to one child and the real estate itself to another. Sometimes the will would specify the dollar amount of the "rents" to be paid. In 1895 the United States Supreme Court in Pollock v. Farmers' Loan & Trust Co., 157 U. S. 429 (1895) ruled the income tax adopted by the Congress of the United States to finance the War Between the States, unconstitutional. The Pollock case was actually argued before the Supreme Court twice and the Court issued two opinions. In its first ruling the Court struck down the statute "so far as it levies a tax on the rents or income of real estate" 157 U.S. 429, 583 and "on the income from the municipal bonds" 157 U.S. 429, 586.

[14] Although the Justices who heard the Pollock, see note 13, case did not all agree that either the tax on rents derived from real estate was a direct tax (Two of the Justices White and Harlan dissented on the issue of rents derived from real estate) or that application of the tax to the income derived from other property was a violation of the Apportionment Clause (White and Harlan were joined by Brown and Jackson in dissenting on this issue), they were unanimous in striking down the tax in so far as it applied to Municipal Bonds. In his dissent to the first Pollock opinion Justice White said: "In regard to the right to include in an income tax the interest upon the bonds of municipal corporations, I think the decisions of this court, holding that the federal government is without power to tax the agencies of the state government, embrace such bonds, and that this settled line of authority is conclusive upon my judgment here. It determines the question that, where there is no power to tax for any purpose whatever, no direct or indirect tax can be imposed. 157 U.S. 429, 652.

That in some cases Congress had no power to tax was clearly understood.

[15] Emphasis added. As much as I appreciate Chief Justice Marshall's incisive observation that "the power to tax is the power to destroy" it is not my favorite line from the Supreme Court. My favorite line is Brother and Justice Hugo L. Blacks' oft repeated and far more incisive observation with respect to the First Amendment "no law means no law." New York Times Co. v United States, 403 U. S. 713, 714 (1971).

[16] Roosevelt's "court-packing" plan, as it has come to be known, has been the subject of a great deal of historical debate. While some historians go so far as to decry Roosevelt's initiative as the surest sign that he had dictatorial ambitions, most scholars agree that it represented a significant political failure for this otherwise popular and successful president. According to most accounts, Roosevelt, having just won an overwhelming majority in the election, believed he had become invincible in the political arena. Under this misguided illusion of invulnerability, Roosevelt went forward with a plan that, some historians claim, could have potentially undermined the integrity of our constitutional system. Compounding the perception of his arrogance is the fact that Roosevelt seemed unwilling to build a coalition of support prior to the proposal of the court-packing initiative. Additionally, some scholars argue that the Court successfully "outfoxed" Roosevelt and saved our constitution by switching its position and upholding the New Deal legislation.

Jamie L. Carson and Benjamin A. Kleinerman, "Switch in Time Saves Nine: Institutions, Strategic Actors, and FDR's Court-Packing Plan," Southern Political Science Association, Savannah, Georgia, November 3-6, 1999.

ww.msu.edu/~pipc/courtpacking.pdf

[17] Pub. L. No. 97-248.

[18] Under TEFRA a "wealthy" taxpayer has $25,000 in income if single or $32,000 if married filing jointly.

[19] The marginal tax rate imposed as a result of the taxation of Social Security benefits under TEFRA is the highest found in the Internal Revenue Code. For each additional dollar of taxable income over the threshold, the taxpayer pays tax on up to $1.80. The nominal rate of tax at the threshold levels is 28% resulting in an effective marginal rate of 50.4% (1.80 x .28 = .504).

[20] The suit by South Carolina, like Pollock, see note 13, produced two opinions by the Court. The first of those opinions, South Carolina v Reagan, 465 US 367 (1984), allowed South Carolina to invoke its original jurisdiction to maintain the suit and seek to enjoin the Treasury from enforcing the applicable provisions of TEFRA. The Court also appointed a "Special Master" to rule on South Carolina's claims. A Special Master is essentially a temporary judge with some particular expertise who is appointed to hear a particular case or determine certain facts in a particular case. The Special Master ruled against South Carolina and found the provisions of TEFRA that subjected Municipal Bonds to the Federal Income Tax constitutional. South Carolina took exception to the ruling of the Special Master and the case returned to the Supreme Court.

[21] 485 U. S. 505(1988).

[22] 157 U. S. 429 (1895), see notes 13 and 14.

[23] "We thus confirm that subsequent case law has overruled the holding in Pollock that state bond interest is immune from nondiscriminatory federal tax." 485 U. S. 505, 524.

[24] This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

United States Constitution, Article VI, clause 2

[25] That the power to tax is in reality the power to destroy is amply demonstrated by study of the Marihuana Tax Act of 1937. The Court's decision in Baker to abandon an pretense of Constitutional Tax Jurisprudence may fairly be

described as the abandonment of all of the protections of private property supposed to be provided in the Bill of Rights.

[26] A document titled The Constitution of the United States of America - Analysis and Interpretation - Annotations of Cases Decided by the Supreme Court of the United States to June 29, 1992 prepared by the Congressional Research Service Library of Congress, Johnny H. Killian George A. Costello Co-editors takes rather a different view of the limitations imposed by Article I, section 9, clause 4 of the United States Constitution. While I would by not means suggest that my own scholarship is any where near the level of this document there are three observations I would like to make. First, Messrs. Killian and Costello prepared the document for and presumedly at the behest of the United States Senate which is at least indirectly their employer. My father was a wise man. On occasion when I failed to tow the line to his satisfaction he would remind me that "he whose food I eat, his song I sing." When serving power a wise man will dain to question the legitimacy of that power. Messrs. Killian and Costello's writing gives every indication of being both scholarly and wise. Second, I pulled out my law school text American Constitutional Law, by Laurence H. Tribe to see what it had to say on the subject. Professor Tribe considers the Constitution a "living document" and does not believe that the Court should feel overly restrained by the ordinary meaning of words in its interpretation of the text. Mr Tribe's text has little to say on the subjects of either the Article I, section 9, clause 4 of the United States Constitution or the Sixteenth Amendment. At least in the 1978 edition of his text Professor Tribe had no trouble understanding what the Apportionment Clause was about. "A direct tax is one imposed upon property as such, rather than on the performance of an act." Tribe, American Constitutional Law, p. 245, Foundation Press (1978). Third I am struck by the fact that Messrs. Killian and Costello did not mention South Carolina v. Baker.

[27] Unless indicated otherwise references to the Internal Revenue Code or the Code are to the Internal Revenue Code of 1986, Title 26 of The United States Code.

[28] Internal Revenue Code section 501(c)(3) reads:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

[29] Internal Revenue Code Section 170 Charitable, etc., contributions and gifts

(a) Allowance of deduction

(1) General rule - There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.

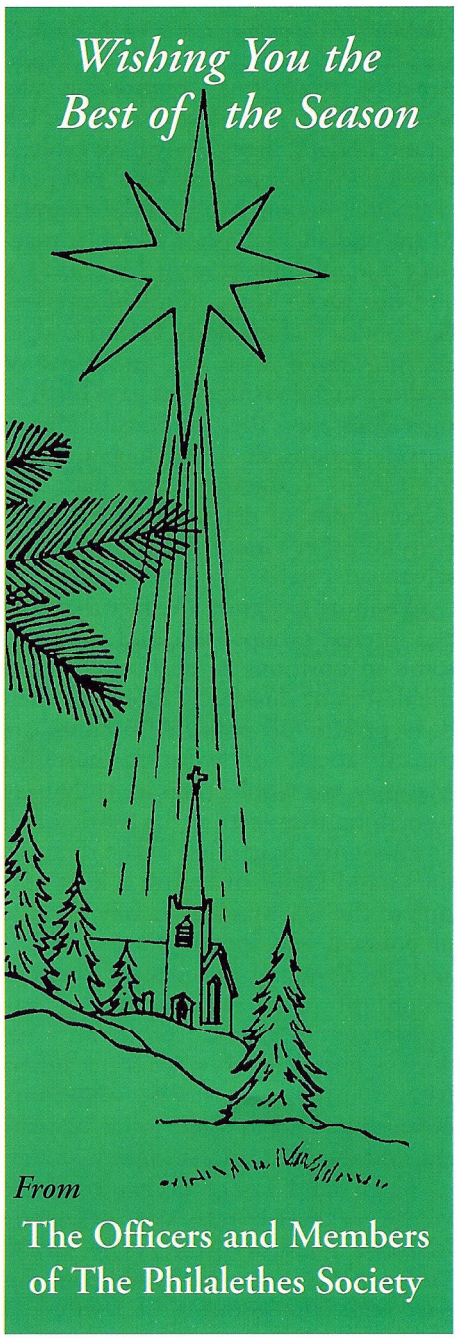
(c) Charitable contribution defined - For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of -

(2) A corporation, trust, or community chest, fund, or foundation -

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and



(D) which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B). Rules similar to the rules of section 501(j) shall apply for purposes of this paragraph.

[30] The following property shall be exempt from taxation under this Article:

Property passing to religious, charitable, or educational corporations ...North Carolina General Statutes section 105-3 (repealed January 1, 1999).

[31] DeMolay International under the able leadership of Brother E. John Elmore sought and obtained a determination of exempt status under IRC sec. 501(c)(3). DeMolay may fairly be characterized as a Masonic youth outreach program and by not a Masonic body.

[32] I am confident that the Master's decision was in no way compelled by the fact that I informed him that if he wanted me to claim the exemption my fees, which I would otherwise waive, might exceed the potential tax savings.

[33] Internal Revenue Code section 501(c)

(10) Domestic fraternal societies, orders, or associations, operating under the lodge system -

(A) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(B) which do not provide for the payment of life, sick, accident, or other benefits.

[34] E.g. Freemasonry and its institutional charities in North Carolina are organized into four civil corporations. The Grand Lodge on North Carolina was incorporated by act of the General Assembly in 1797. The Oxford Orphan Asylum established in 1873, charter by the Superior Court of Granville County in 1895 and granted corporate charter by Private Act of the General Assembly in 1897. The Masonic and Eastern Star Home of North Carolina, Incorporated formed by a Charter filed with the Secretary of State in 1910. The sole entity created after ratification of the 16th Amendment is the North Carolina Masonic Foundation, Incorporated formed by a Charter filed with the Secretary of State in 1929.

[35] Terrorist organizations claiming a "right" to employ violence against others to achieve their purposes are "sovereigns" or "governments" within this definition.

[36] If Freemasonry's Blood Oaths were taken literally this would not be the case. If our early Brothers every harbored thoughts that the Blood Oaths ought to be given literal effect, the Morgan Affair convinced the fraternity that its survival depended on frequent convincing public renunciations of violence.

[37] Drew Arrowood subsequently petitioned the Lodge was initiated, passed and raised and is now serving as Junior Deacon of Cabarrus Lodge number 720. Brother Arrowood also provided valuable assistance in editing this paper.

[38] Use of the phrase "the Government" is deliberate. The ruling in South Carolina v. Baker reduced the states entirely to the status of instrumentalities of the Federal Government. As a son of the South, I am inclined to believe that that

process began with full vigor when a war was fought to compel certain states to remain part of the Union against their expressed political will. The ruling in South Carolina v. Baker was merely the last of many steps in fully subordinating the formerly independent states.

[39] Bahonson, Charles F., North Carolina Lodge Manual 1892, 1995, page 25.

[40] The pernicious effects of Medicaid and other General Fund revenues available to voluntary associations will be amply demonstrated by budget ratios for Masonic Homes that accept these funds. Budget ratios may be obtained from MHEANA.

[41] Recognizing the problem [of unfunded pay as you go social security programs], 20 countries have made funded private retirement accounts (PRAs) for 80 million workers part of their mandatory retirement security programs. Many other countries are about to do the same.

James, Estelle Social Security Reform Around the World: Lessons from Other Countries, Policy Report No. 253, July, 2002, National Center for Policy Analysis, http://www.ncpa.org/pub/st/-st253/

[42] The average privately managed pension fund around the world earned a large positive rate of return, that far exceeded inflation and wage growth, during the last 30 years. By contrast, the average publicly managed pension fund lost much of its capital during the same time period.

Ibid.

[43] Freemasonry was the oldest and most prestigious of the societies. Its adherence to the principal that Initiation should equal one month's wages and annual dues one week's wages priced it beyond the means of newly arrived immigrants.

[44] [T]here has been a fundamental transformation in the nature of fraternalism. For the most part, fraternal membership, although still heavily working class, no longer includes the very poor. The rise of alternative forms of social welfare has dramatically reduced the demand for social welfare services among members. Mutual aid was a creature of necessity. Once this necessity ended, so, too, did the primary reason for the existence of fraternalism. Without a return to this necessity, any revival of mutual aid will remain limited.

The shift from mutual aid and self-help to the welfare state has involved more than a simple bookkeeping transfer of service provision from one set of institutions to another. As many of the leaders of fraternal societies had feared, much was lost in an exchange that transcended monetary calculations. The old relationships of voluntary reciprocity and autonomy have slowly given way to paternalistic dependency. Instead of mutual aid, the dominant social welfare arrangements of Americans have increasingly become characterized by impersonal bureaucracies controlled by outsiders.

Beito, Ibid. page 234.

The Recognition Game

continued from page 135

bogus group of individuals who pretend to practice Masonry, but because the Commission on Information for Recognition of the Conference of Grand Masters of Masons in North America does not want them recognized. But didn't this Commission often state that it "in no way tries to influence any Grand Lodge"? Yes, they did say that. And yes, the Grand Lodge of New York did say that the Grand Lodge of MN action was a "gross violation of the established rules under which all Regular Grand Lodges operate." Whose rules? The Commission's rules. The Grand Lodge of New York also wrote that the Grand Lodge of MN was "undermining of the accepted Standards of Recognition required by all Regular Grand Lodges." Regardless of the Commission's published statements, it is clearly understood by many Grand Lodges that the Commission's determinations and opinions are "required" to be followed or risk expulsion from the US Masonic family. It is a threat that apparently has teeth.

We must now ask again if following the "requirements" as laid down by this Commission renders all participating Grand Lodges irregular by the surrendering of their independence? Of course not. Why? Because the rules of the game change to favor the Commission's desires.

It seems to be the time to pull the teeth of the Commission on Information for Recognition of the Conference of Grand Masters of Masons in North America. While this Commission may well have been created as a service to US Grand Lodges, they clearly have evolved into a body that dictates laws and policies. Such action is obviously irregular to any and all established Masonic practices. Grand Lodges must be sovereign and not under the control of any foreign policy making body. Grand Lodges are not faced with the problems of swelling memberships that gave birth to their delegating their responsibilities to outside groups. It seems long overdue for Grand Lodges to take back the responsibility of determining the regularity of other Grand Lodges for themselves.

We must recognize the fact that special interest groups exist and influence some in positions of authority. When the desires of those who lobby for their own private or political interests are placed ahead of what is best for Masonry as a whole, then we truly have something that tears at the fabric of all Freemasonry. Regardless of the rhetoric, the Grand Lodge of France is kept outside of the US Masonry family because of political and special interest whims and the changing (or creative interpretation) of rules, not because of any legitimate Masonic problem. We deceive ourselves when we think otherwise. Outright falsehoods were told, believed and acted upon some 50 years ago and the fabrications continue today.

The Grand Lodge of France is the victim of falsehoods and deliberate Masonic political games. The Grand Lodge of MN was equally a victim this past year. The granting of favors and political maneuvering casts a most unMasonic shadow on the Conference of Grand Masters of Masons in North America. It is high time it ended.

My son is young and is learning that one must play fair if he is to be respected. He is learning that when one cheats, it results in serious consequences once the activity is discovered. We can only hope that the Conference of Grand Masters of Masons in North America can likewise learn this lesson.

NOTES:

1. 1954 Conference of Grand Masters transactions, page 119.
2. Grand Lodge Recognition: A Symposium on The Conditions of Grand Lodge Recognition, Compiled and Published by The Commission on Information for Recognition of the Conference of Grand Masters of Masons in North America, Macoy Publishing and Masonic Supply Company, New York, 1956.
3. 1999 Conference of Grand Masters transactions, page 170.
4. Rev. Terry L. Tilton, Grand Master, Grand Lodge of Minnesota. Edict - July 13, 2002.
5. Roy, Thomas S., ed. Information for Recognition: Reports on Grand Lodges in Other Lands, page 105.
6. One jurisdiction, Arizona, considered, on June 8, 2002, entering into relations of the Grand Lodge of France, but, presumably due to the actions taken against MN, tabled the vote for a year.
7. Edict, May 1, 2002.
8. New York Grand Lodge 2002 Proceedings.
9. Tilton, Edict - July 13, 2002.
10. The UGLE entered into fraternal relations with the PH GL of MA on Dec. 14, 1994 while fraternal relations did not exist between the GL of MA and the PH GL of MA. The GL of MA entered into relations with the PH GL of MA on March 8,1995. No written treaty existed between the two MA bodies until March of 1995.